

State Board of Embalmers and Funeral Directors

July 24, 2013

Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri 65109

OPEN MINUTES

The meeting of the State Board of Embalmers and Funeral Directors was called to order via conference call by James Reinhard, Chairman, at 9:35a.m.

Roll Call

Members Present

James Reinhard, Chairman
Collin Follis, Secretary
Eric Pitman
Gary Fraker
Jerald Dickey

Members Not Present

Archie Camden, Public Member/Vice Chairman

Staff Present

Sandy Sebastian, Executive Director
Lori Hayes, Inspector
Tabatha Lenzini, Administrative Assistant
Sharon Euler, Division Legal Counsel
Andy Brisco, Division Director of Budget and Legislation

Approval of the Agenda

Jim amended the agenda to add closed following legal counsel report. A motion was made by Gary Fraker and seconded by Collin Follis to approve the open agenda. Motion carried with Jerald Dickey and Eric Pitman voting in favor with no votes in opposition. Archie Camden was not present for the meeting.

Jim introduced Andy Brisco as the Division's Director of Budget and Legislation. Andy talked briefly about the legislation process and what will happen with the proposal of legislation.

Executive Director Report

No report

Legal Counsel Report

Sharon reported that sentencing was scheduled for the defendants that plead guilty in the National Prearranged Services matter and that trial was scheduled for August 5th for the investment advisor David Wolfe, who did not enter a plea agreement.

A member of the public stated the funeral homes are getting victim impact letters to explain monetary losses, non-monetary issues, being asked to provide other comments regarding sentencing.

Move to Closed

A motion was made by Collin Follis and seconded by Jerald Dickey to move to close for #2 of the attached motions to close. Motion carried with Collin Follis, Jerald Dickey, Gary Fraker and Eric Pitman voting in favor with no votes in opposition. Archie Camden was not present for the meeting.

Legislative Proposal Discussion

The board reviewed the proposed language for consideration as legislative proposals, attached is the language. Members of the public discussed with the board as they reviewed the language.

Section 333.061

Sharon recommended adding "funeral establishment" to #1.

Section 3 was reviewed and the board discussed changing to read that an application expires in 90 days. Decision was to leave it at 6 months.

Section 333.310

The board accepted the proposed language. Sharon stated that the language would provide additional clarification for the embalmers board as well as the office of endowed care cemeteries.

Section 333.315

The board accepted the proposed language

Section 333.320

The board accepted the proposed language

Section 333.325

Sharon recommended deleting the temporary permit language from the proposal. The board further discussed how the agent must have a relationship with a seller prior to being authorized to seller preneed. The board decided to amend language to eliminate the requirement that an agent has to have a seller associated with in order to get a license.

Section 333.330

The board added or "any other state" to (8) of the language and to delete the last sentence that is in the proposal.

Section 333.021

The board accepted the proposed language

Section 333.041

The board accepted the proposed language

Section 333.042

Following conversation and comments from the public in attendance the board decided to delete the language regarding temporary funeral director licensure.

James Reinhard made a recommendation to table any proposals relating to Chapter 436 and not pursue any this session.

A motion was made by Gary Fraker and seconded by Collin Follis to approve Jim's recommendation to table Chapter 436 proposals for this session. Motion carried Jerald Dickey and Eric Pitman voting in favor with no votes in opposition. Archie Camden was not present for the meeting.

Eric Pitman asked the board if they would consider putting something in the reciprocity language section 333.051 that would allow a temporary work permit for those applying for reciprocity until they pass the law test. The board asked that draft language be prepared for review at a later meeting.

A motion was made by Jerald Dickey and seconded by Gary Fraker to pursue a legislative package on section 333. Motion carried with Collin Follis and Eric Pitman voting in favor with no votes in opposition. Archie Camden was not present for the meeting.

Move to Closed

A motion was made by Eric Pitman and seconded by Collin Follis to move to closed session for #1, 2, 7, 8, and 9 of the attached motions to close. Motion carried with Gary Fraker and Jerald Dickey voting in favor. Archie Camden was not present for the meeting.

Adjournment

A motion was made by Gary Fraker and seconded by Collin Follis to adjourn the meeting at 11:24 a.m. Motion carried with Jerald Dickey and Eric Pitman voting in favor with no votes in opposition. Archie Camden was not present for the meeting.

Approved by the board: December 16-17, 2013

Executive Director signature: Sandy Sebastian

MOTIONS TO GO INTO CLOSED SESSION

1. DISCIPLINE

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline

2. LEGAL ACTIONS/LITIGATIONS/PRIVILEGED COMMUNICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney

3. PROMOTING/HIRING/DISCIPLINING/FIRING EMPLOYEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency

4. DIAGNOSIS/TREATMENT OF DISCIPLINED LICENSEES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (5) and Section 324.001.8 RSMo. for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees

5. EXAMINATION MATERIALS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (7) RSMo for reviewing testing and examination materials

6. EMPLOYEE PERFORMANCE RATINGS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (13) RSMo for making performance ratings pertaining to individual employees

7. APPLICATIONS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure

8. CLOSED MINUTES

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021, Subsection (14) and 324.017 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings

9. COMPLAINTS/ INVESTIGATIVE REPORTS/AUDITS

I move that this meeting be closed and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from this closed meeting be closed under Section 610.021 subsection (14) and section 620.010.14 subsection (7) RSMo for the purpose of discussing investigative reports and/or complaints and/or audits and/or other information pertaining to a licensee or applicant

Revised 09-11

PROPOSED LANGUAGE CHANGES FROM PREVIOUS YEARS

No funeral establishment to be operated by unlicensed person--license requirements, application procedure--license may be suspended or revoked or not renewed.

333.061. 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have available in the preparation or embalming room a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, place, if other than at the establishment, the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. [The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.] **If an applicant does not meet the requirements for licensure within six months from the date of the application, the applicant shall be required to file a new application and no fees previously paid previously shall apply toward the application fee.**

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section [333.121] **333.330**. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section [333.121] **333.330** shall be followed.

Applicability of law.

333.310. The provisions of sections 333.310 to 333.340 shall not apply to a cemetery operator **licensed pursuant to section 214.275** who sells contracts or arrangements for **funeral merchandise or** services for which payments received by, or on behalf of, the purchaser are **deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries** [required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214;] provided that a cemetery operator shall comply with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer. **A cemetery operator claiming an exemption pursuant to this section and section 436.410, shall, concurrent with the application for renewal of licensure pursuant to section 214.275, file a statement of exemption with the State Board of Embalmers and Funeral Directors and Office of Endowed Care Cemeteries. If requested by the State Board of Embalmers and Funeral Directors, the cemetery operator shall provide proof of licensure pursuant to section 214.275.**

Provider license required--application procedure--renewal of licensure--expiration of license.

333.315. 1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

2. An applicant for a preneed provider license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(3) Identify the name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(4) Identify the name and address of each seller authorized by the provider to sell preneed contracts in which the provider is designated or obligated as the provider;

(5) File with the state board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the provider's books and records which contain information concerning preneed contracts sold for or on behalf of a seller or in which the applicant is named as a provider; and

(6) If the applicant is a corporation, each officer, director, manager, or controlling shareholder shall be eligible for licensure if they were applying for licensure as an individual.

3. Each preneed provider shall apply to renew his or her license on or before [October thirty-first of each year or] a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board [by rule];

(2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;

(3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(4) File an annual report with the state board which shall contain:

(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

Seller license required--application procedure--renewal of licensure--expiration of license.

333.320. 1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

2. An applicant for a preneed seller license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be an individual resident of Missouri who is eighteen years of age or older, or a business entity registered with the Missouri secretary of state to transact business in Missouri;

(3) If the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;

(4) Meet all requirements for licensure;

(5) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;

(6) Identify the name and address of each licensed provider that has authorized the seller to designate such person as a provider under a preneed contract;

(7) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;

(8) Identify the name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and

(9) File with the board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller.

3. Each seller shall apply to renew his or her license on or before [October thirty-first of each year or] a date established by the division of professional registration pursuant to section 324.001. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board [by rule];

(2) Pay a renewal fee in an amount established by the board by rule; and

(3) File annually with the board a signed and notarized annual report as required by section 436.460.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal [within two years of the renewal date] may apply for reinstatement **within two years of the renewal date** by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

Registration as a preneed agent required--application procedure--renewal of registration--expiration of registration.

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older; **and possess a high school diploma, a general education equivalency diploma, or equivalent thereof, as determined, at its discretion, by the board;**

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed the Missouri law examination as designated by the board;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

(6) Upon acceptance of the completed application and fees by the board, the board may issue a temporary permit to an applicant who had made a prima facie showing that the applicant meets all of the requirements for such registration. The temporary permit shall be effective only until the applicant submits satisfactory evidence of successfully passing the Missouri law examination. In no event shall such temporary permit be in effect for more than six months after the date of its issuance and shall not be reissued to the same applicant. The holder of a temporary permit which has not expired, or been suspended or revoked, shall be deemed to be the holder of a registration issued pursuant to 333.325 until such temporary permit expires, is terminated or is suspended or revoked.

(7) If an applicant does not meet the requirements for registration within one year from the date of application, the applicant shall be required to file a new application and no fees paid previously shall apply toward the registration fee.

3. Each preneed agent shall apply to renew his or her registration on or before [October thirty-first of each year or] a date established by the division of professional registration pursuant to section 324.001. A registration which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board [by rule];

(2) Pay a renewal fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license renewal; and

(3) Provide the name and address of each seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for or on behalf of.

(4) If an applicant does not meet the requirements for registration within one year from the date of application, the applicant shall be required to file a new application and no fees paid previously shall apply toward the registration fee.

4. Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of preneed contracts as part of their [biennial] renewal form. Each funeral director preneed agent shall be included on the board's registry.

5. Any registration which has not been renewed as provided by this section shall expire and the registrant shall be immediately removed from the preneed agent registry by the board. A registrant who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board.

**Refusal of registration, when--complaint procedure--injunctive relief authorized, when--
reapplication after revocation, when.**

333.330. 1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;

(3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority, permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession [regulated by this chapter] granted by another state, territory, federal agency, or country upon grounds for which revocation or suspension is authorized in this state or **upon a finding by any state, local or federal agency or court that the holder of any professional license has engaged in any conduct involving any act of violence, fraud or dishonesty;**

- (9) A person is finally adjudged mentally incompetent by a court of competent jurisdiction;
- (10) Misappropriation or theft of preneed funds;
- (11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;
- (12) Issuance of a certificate of registration or authority, permit, or license based upon a material mistake of fact;
- (13) Failure to display a valid certificate or license if so required by this chapter regulating preneed or any rule established thereunder;
- (14) Violation of any professional trust or confidence;
- (15) Making or filing any report required by sections 436.400 to 436.520 regulating preneed which the licensee knows to be false or knowingly failing to make or file a report required by such sections;
- (16) Use of any advertisement or solicitation which is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed; or
- (17) Willfully and through undue influence selling a funeral;
- (18) Willfully and through undue influence selling a preneed contract;
- (19) Violation of any of the provisions of chapter 193, 194, 407, or 436;
- (20) Presigning a death certificate or signing a death certificate on a body not yet embalmed by, or under the personal supervision of, the licensee;
- (21) Failure to execute and sign the death certificate on a body embalmed by, or under the personal supervision of, a licensee;
- (22) Failure to refuse to properly guard against contagious, infectious, or communicable diseases or the spread thereof;
- (23) Refusing to surrender a dead human body upon request by the next of kin, legal representative, or other person entitled to the custody and control of the body.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke any certificate of registration or authority, permit, or license issued under this chapter.

4. In addition to all other powers and authority granted by the board, the board may seek an injunction, restraining order or other order from the circuit court of Cole County to enjoin any seller from engaging in preneed sales upon a showing by the board that the seller has failed to make deposits into the preneed trust, has obtained funds out of the trust to which the seller is not entitled or has exercised influence or control over the trustee or has engaged in any other act that has resulted in a shortage in any preneed trust or joint account which exceeds twenty percent of the total amount required to be held or deposited into the trust or joint account under the provisions of sections 436.400 to 436.520. In addition to the power to enjoin for this conduct, the circuit court of Cole County shall also be entitled to suspend or revoke the preneed seller's license and any other license issued pursuant to this chapter, held by the seller.

5. An individual whose certificate of registration or authority, permit, or license has been revoked shall wait three years from the date of revocation to apply for any certificate of registration or authority, permit, or license under this chapter, either as an individual or as a manager, director, shareholder, or partner of any business entity. Any certificate of registration or authority, permit, or license shall be issued at the discretion of the board after compliance with all the requirements of this chapter relative to the licensing or registration of the applicant for the first time.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.335.

Applicability exceptions.

436.410. The provisions of sections 436.400 to 436.52[0]5 shall not apply to any contract or other arrangement sold by a cemetery operator **licensed pursuant to section 214.275, who sells, contracts or otherwise makes arrangements for funeral merchandise or funeral related services** for which payments received **from, or on behalf of, the purchase are deposited either to an escrow account, or a preneed trust governed by the provision of Chapter 214, provided that a cemetery operator shall comply with sections 333.310 to 333.340 if the contract or arrangements sold by the operator includes services that may only be provided by a licensed funeral director or embalmer. A cemetery operator claiming exemption pursuant to this section and section 333.310, shall, concurrent with the application for renewal of licensure pursuant to section 214.275, file a statement with the board and also with the office of endowed care cemeteries. If requested by the board, the cemetery operator shall provide proof of licensure under Chapter 214 to the board.** [by or on behalf of the purchaser are required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214; provided that a cemetery operator shall comply with sections 436.400 to 436.520 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.]

Trust-funded preneed contract requirements.

436.430. 1. A trust-funded guaranteed preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333, RSMo, and this chapter or other state or federal law.

[3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.]

[4. In addition to the origination fee, the trustee may distribute to the seller an amount up to ten percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.]

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither control, be controlled by, nor be under common control with the seller or preneed agent. The terms "control", "controlled by" and "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities. This presumption may be rebutted by a showing to the board that control does not in fact exist.

7. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trustee maintains adequate records that individually and separately identify the payments, earnings, and distributions for each preneed contract.

8. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, other circumstances of the trust, and all other requirements of sections 436.400 to 436.520.

9. All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets. Principal of the trust shall not be used to pay the costs of administration. If the income of the trust is insufficient to pay the costs of administration, those costs shall be paid as per the written agreements between the seller, provider and the trustee.

10. The seller and provider of a trust-funded guaranteed preneed contract shall be entitled to all income, including, but not limited to, interest, dividends, capital gains, and losses generated by the investment of preneed trust property regarding such contract as stipulated in the contract between the seller and provider **upon performance of the contract**. Income of the trust, excluding expenses allowed under this subsection, shall accrue through the life of the trust, except in instances when a contract is cancelled. The trustee of the trust may distribute market value of all income, net of losses, to the seller upon, but not before, the final disposition of the beneficiary and provision of the funeral and burial services and facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall apply to trusts established on or after August 28, 2009.

11. Providers shall request payment by submitting a certificate of performance to the seller certifying that the provider has rendered services under the contract or as requested. The certificate shall be signed by both the provider and the person authorized to make arrangements on behalf of the beneficiary. If there is no written contract between the seller and provider, the provider shall be entitled to the market value of all trust* assets allocable to the preneed contract. Sellers shall remit payment to the provider within sixty days of receiving the certificate of performance.

12. If a seller fails to make timely payment of an amount due a provider under sections 436.400 to 436.520, the provider shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the provider from the trust all amounts to which the seller would be entitled to receive for the preneed contract.

13. The trustee of a preneed trust, including trusts established before August 28, 2009, shall maintain adequate books and records of all transactions administered over the life of the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in section 436.460. The seller shall furnish to each contract purchaser, within thirty days after receipt of the purchaser's written request, a written statement of all deposits made to such trust regarding such purchaser's contract including the principal and interest paid to date.

14. A preneed trust, including trusts established before August 28, 2009, shall terminate when the trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.

Contract form, requirements--voidability of contract--waiver of contract benefits for public assistance recipients.

436.425. 1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

- (1) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;
- (2) Identify the name, address, phone and license number of the provider and the seller;
- (3) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested;
- (4) Identify whether the contract is trust funded, insurance funded, or joint account funded;
- (5) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;
- (6) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;
- (7) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;
- (8) Prominently identify whether the contract is revocable or irrevocable;
- (9) Set forth the terms for cancellation by the purchaser or by the seller;
- (10) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;
- (11) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;
- (12) Include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent's **name and registration number** responsible for the sale of the contract, and the seller or its authorized representative;
- (13) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;
- (14) Include any applicable consumer disclosures required by the board by rule; and
- (15) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event;
- (16) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if it is determined in a court of competent jurisdiction that the contract is not in compliance with this section or not issued by a seller licensed under chapter 333, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

3. A beneficiary who seeks to become eligible to receive public assistance under chapter 208 or any other applicable state or federal law may irrevocably waive their rights to receive any refund or payment of any moneys from the funds or insurance used to fund their preneed contract. Such irrevocable waiver may be executed at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to the seller and any applicable trustee, financial institution or insurance company.

4. All purchasers shall have the right as provided in this chapter to cancel or rescind a revocable preneed contract and transfer any preneed contract with or without cause.

5. A preneed contract, shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

Compliance of contracts entered into prior to effective date--investment of trust property and assets--loans against assets prohibited.

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof and shall only be invested and reinvested in investments which have reasonable potential for growth or producing income. Funds in, or belonging to, a preneed trust shall not be invested in any term life insurance product.

3. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification.

The trustee shall set out such determination in writing, to be included in the books and records that are made available to the Board and its agents and designees.

5. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio;
- (5) The expected total return from income and the appreciation of capital;
- (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

6. No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of **[August 29, 2009] August 28, 2009**, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

PROPOSED LEGISLATIVE CHANGES NOT REVIEWED PREVIOUSLY

333.021. 1. No person **or entity** shall engage in the practice of embalming, **funeral directing or act as a preneed agent, seller, provider or funeral establishment** in this state unless **[he has a] that person holds the appropriate** license(s) as required by this chapter.

2. No person **or entity** shall **[engage in the practice of funeral directing unless he has a license issued under this chapter nor shall any person]** use in connection with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", "funeral director" or other title implying that he is in the business **of acting as a funeral director, embalmer, establishment, seller or provider, as defined [as funeral directing]** herein, unless **[he or the individual having control, supervision or management of his business is duly licensed to practice funeral directing in this state] the person or entity holds a valid license to act as such as required by this chapter.**

Bold times new roman is addition

[arial non bold is deletion]

Black is existing language from statute

**License, application for [Qualifications of] embalmer applicants—qualifications for, examinations--
licenses--board may waive requirements in certain cases.**

333.041. 1. [Each applicant for a license to practice funeral directing shall furnish evidence to establish to the satisfaction of the board that he or she is:

(1) At least eighteen years of age, and possesses a high school diploma, a general equivalency diploma, or equivalent thereof, as determined, at its discretion, by the board; and

(2) A person of good moral character.

2.] Every person [desiring to enter the profession of embalming dead human bodies within the state of Missouri and] who is enrolled in a program **in Missouri** accredited by the American Board of Funeral Service Education, any successor organization, or other accrediting entity as approved by the board shall [register with] **apply to** the board as a practicum student [upon] **on** the form provided by the board **and pay the current fee established by the board**. After such registration, a student may assist, under the direct supervision of Missouri licensed embalmers and funeral directors, in Missouri licensed funeral establishments, while serving his or her practicum. [The form for registration as a practicum student shall be accompanied by a fee in an amount established by the board.]

[3] 2. Each applicant for a license to practice embalming shall **submit to the board a written application on forms furnished by the board, pay the current application fees, and shall** furnish evidence to establish to the satisfaction of the board that he or she:

(1) Is at least eighteen years of age, and possesses a high school diploma, a general equivalency diploma, or equivalent thereof, as determined, at its discretion, by the board;

(2) Is a person of good moral character;

(3) Has completed a funeral service education program accredited by the American Board of Funeral Service Education, any successor organization, or other accrediting entity as approved by the board. [If an applicant does not complete all requirements for licensure within five years from the date of his or her completion of an accredited program, his or her registration as an apprentice embalmer shall be automatically cancelled. The applicant shall be required to file a new application and pay applicable fees. No previous apprenticeship shall be considered for the new application];

(4) Upon due examination administered by the board, [is possessed of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative art, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof or has passed the national board] **shall submit proof of successful completion of the National Board Funeral Service Arts examination and the National Board Funeral Service Science examinations** of the Conference of Funeral Service Examining Boards, or successor organization. **The board shall by rule and regulation prescribe the standard for successful completion of the examinations.** [If any applicant fails to pass the state examination, he or she may retake the examination [at the next regular examination meeting. The applicant shall notify the board office of his or her desire to retake the examination at least thirty days prior to the date of the examination. Each time the examination is retaken, the applicant shall pay a new examination fee in an amount established by the board];

(5) Serves an apprenticeship of at least twelve consecutive months in a Missouri licensed funeral establishment licensed for embalming. The applicant shall devote at least 30 hours per week to his or her duties as an apprentice under the supervision of a Missouri licensed embalmer. [Has been employed full time in funeral service in a licensed funeral establishment and] The applicant shall submit proof to the board, on forms provided by the board, on forms provided by the board, that the applicant has personally embalmed at least twenty-five dead human bodies under the personal supervision of [an] a Missouri licensed embalmer [who holds a current and valid Missouri embalmer's license or an embalmer who holds a current and valid embalmer's license in a state with which the Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than twelve consecutive months]. "Personal supervision" means that the licensed embalmer shall be physically present during the entire embalming process in the first six months of the apprenticeship period and physically present at the beginning of the embalming process and available for consultation and personal inspection within a period of not more than one hour in the remaining six months of the apprenticeship period. [All transcripts and other records filed with the board shall become a part of the board files.];

(6) The applicant shall submit proof of successful completion of the Missouri Law examination of the Conference of Funeral Service Examining Boards, or successor organization; and

(7) Meets all other requirements for licensure as required by statute or rule or regulation.

[4. If the applicant does not complete the application process within the five years after his or her completion of an approved program, then he or she must file a new application and no fees paid previously shall apply toward the license fee.

5. Examinations required by this section and section 333.042 shall be held at least twice a year at times and places fixed by the board. The board shall by rule and regulation prescribe the standard for successful completion of the examinations.]

[6] 4. Upon establishment of his or her qualifications as specified by this section [or section 333.042], the board shall issue to the applicant a license to practice [funeral directing or] embalming [, as the case may require,] and shall register the applicant as a duly licensed [funeral director or a duly licensed] embalmer. [Any person having the qualifications required by this section and section 333.042 may be granted both a license to practice funeral directing and to practice embalming.]

5. If an applicant does not complete all requirements for licensure within twenty-four consecutive months from the date of his or her application, the application for licensure shall be cancelled. The applicant shall be required to file a new application, pay applicable fees, and fulfill the requirements for licensure outlined in this section. No previous apprenticeship shall be considered for the new application.

6. Any person meeting the qualifications required by this section and section 333.042 may be granted both a license to practice funeral directing and to practice embalming, upon proper application and paying applicable fees.

[7. The board shall, upon request, waive any requirement of this chapter and issue a temporary funeral director's license, valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury.]

(L. 1965 p. 522 § 4, A.L. 1969 H.B. 56, A.L. 1977 S.B. 6, A.L. 1981 S.B. 16, A.L. 1983 S.B. 44 & 45, A.L. 1993 S.B. 27, A.L. 1998 S.B. 854, A.L. 2001 H.B. 48, A.L. 2011 H.B. 265 merged with S.B. 325)

Bold times new roman is addition

[arial non bold is deletion]

Black is existing language from statute

License, [A]application for funeral director applicants – [and examination fees for funeral directors,] apprenticeship requirements--examinations [content for applicants--apprenticeship duties--appearance before board]--limited license only for cremation--exemptions from apprenticeship.

333.042. 1. [Every person desiring to enter the profession of funeral directing in this state] **Each applicant for a licesnse to practice funeral directing shall [make] submit to the board a written application on forms furnished by the board, [with the state board of embalmers and funeral directors and] pay the current application [and examination] fees, and shall furnish evidence to establish to the satisfaction of the board that he or she:** [. Except as otherwise provided in section 41.950, applicants not entitled to a license pursuant to section 333.051 shall serve an apprenticeship for at least twelve consecutive months in a funeral establishment licensed for the care and preparation for burial and transportation of the human dead in this state or in another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirements for admission to practice funeral directing in this state. The applicant shall devote at least fifteen hours per week to his or her duties as an apprentice under the supervision of a Missouri licensed funeral director. Such applicant shall submit proof to the board, on forms provided by the board, that the applicant has arranged and conducted ten funeral services during the applicant's apprenticeship under the supervision of a Missouri licensed funeral director. Upon completion of the apprenticeship, the applicant shall appear before the board to be tested on the applicant's legal and practical knowledge of funeral directing, funeral home licensing, preneed funeral contracts and the care, custody, shelter, disposition and transportation of dead human bodies. Upon acceptance of the application and fees by the board, an applicant shall have twenty-four months to successfully complete the requirements for licensure found in this section or the application for licensure shall be cancelled.]

(1) Is at least eighteen years of age, and possesses a high school diploma, a general equivalency diploma, or equivalent thereof, as determined, at its discretion, by the board; [and]

(2) A person of good moral character[.];

(3) [Except as otherwise provided in section 41.950, applicants not entitled to a license pursuant to section 333.051 s]Shall serve an apprenticeship of at least twelve consecutive months in a Missouri licensed funeral establishment licensed for the care and preparation for burial and transportation of the human dead. The applicant shall devote at least fifteen hours per week to his or her duties as an apprentice under the supervision of a Missouri licensed funeral director. The applicant shall submit proof to the board, on forms provided by the board, that the applicant has arranged and conducted ten funeral services during the applicant's apprenticeship under the supervision of a Missouri licensed funeral director[.];

(4) Upon completion of the apprenticeship, the applicant shall submit proof of successful completion of the National Board Funeral Service Arts examination or the Missouri Funeral Service Arts examination, and the Missouri Law examination of the Conference of Funeral Service Examining Boards, or successor organization. The board shall by rule and regulation prescribe the standard for successful completion of the examinations. If any applicant fails to pass the examination, he or she may retake the examination at the next available examination date. Each time the examination is retaken, the applicant shall pay the new examination fee; and

(5) Meets all other requirements for licensure as required by statute or rule or regulation.

2. If a person applies for a limited license to work only in a funeral establishment which is licensed only for cremation, including transportation of dead human bodies to and from the funeral establishment, he or she shall make application, pay the current application **[and examination]** fees and successfully complete the Missouri law examination. He or she shall be exempt from the twelve **consecutive [-]** month apprenticeship required by subsection 1 of this section and the **[practical] National Board Funeral Service Arts examination or the Missouri Funeral Service Arts** examination before the board. If a person has a limited license issued pursuant to this subsection, he or she may obtain a full funeral director's license if he or she fulfills the apprenticeship and successfully completes the **required** examination.

3. If an applicant does not complete all requirements for licensure within twenty-four consecutive months from the date of his or her application the application for licensure shall be cancelled. The applicant shall be required to file a new application, pay applicable fees, and fulfill the requirements for licensure outlined in this section. No previous apprenticeship shall be considered for the new application.

[3] 4. If an individual is a Missouri licensed embalmer or has completed a program accredited by the American Board of Funeral Service Education, any successor organization, or other accrediting entity as approved by the board or has successfully completed a course of study in funeral directing offered by an institution accredited by a recognized national, regional or state accrediting body and approved by the state board of embalmers and funeral directors, and desires to enter the profession of funeral directing in this state, the individual shall comply with all the requirements for licensure as a funeral director pursuant to subsection 1 of section 333.041 and subsection 1 of this section; however, the individual is exempt from the twelve **consecutive [-]** month apprenticeship required by subsection 1 of this section.

5. Upon establishment of his or her qualifications as specified by this section the board shall issue to the applicant a license to practice funeral directing and shall register the applicant as a duly licensed funeral director.

6. The board shall, upon request, waive any requirement of this chapter and issue a temporary funeral director's license, valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury.